

**Letter of Findings: 04-20160568  
Gross Retail Tax  
For the Year 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Copier Manufacturer/Distributor filed and paid its December 2012 sales tax return in a timely fashion and was entitled to the one-percent collection allowance.

### ISSUE

#### **I. Gross Retail Tax - Unreported Sales Tax.**

**Authority:** IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-6-14](#); [45 IAC 2.2-6-15](#).

Taxpayer argues that it timely filed for and paid its December 2012 sales tax liability.

### STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of manufacturing and selling copy machines. Taxpayer operates an Indiana business location and sells its machines to Indiana customers.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. The audit resulted in an assessment of additional sales tax. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

#### **I. Gross Retail Tax - Unreported Sales Tax.**

### DISCUSSION

The Department's audit resulted in a determination that Taxpayer did not file for or remit December 2012 tax. The audit assessed additional tax for that period.

Taxpayer argues that it timely filed its December 2012 sales tax return, that it paid the tax due at the time the return was filed, and that it is entitled to the one-percent "collection allowance" for that payment.

The proposed assessment of tax constitutes evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

The issue is whether Taxpayer timely filed and paid its December 2012 sales tax return. Taxpayer admits that it routinely filed sales tax returns in a somewhat unorthodox fashion. As Taxpayer explains:

All returns prior to December 2012 were consistently filed on a one month lag. (i.e. June 2012 return was filed with May 2012 data and so on.). The reason for this lag was extenuating circumstances due to system limitations and business volume.

However, Taxpayer indicates that the December 2012 return was timely filed and that it is entitled to a \$112 collection allowance. Authority for granting such an allowance is found at [45 IAC 2.2-6-14](#) which states:

In order to compensate retail merchants for collecting and timely remitting the state gross retail and use tax, the retail merchant, except the retail merchant referred to in Regulation 6-2.5-6-10(c)(010) [[45 IAC 2.2-6-16](#)], is entitled to deduct and retain from the tax liability determined in [IC 6-2.5-7-5](#) or under this chapter of the Regulation [[45 IAC 2.2-6](#)], if timely remitted, a retail merchant's collection allowance.

(Emphasis added).

The amount of the "collection allowance equals one percent [] of the retail merchant's gross retail and use tax liability . . . ." [45 IAC 2.2-6-15](#).

A detailed review of the Department's records establish that Taxpayer is correct. Taxpayer did indeed timely file and remit sales tax due for December 2012 period. The Audit Division is requested to review the original report and to make the appropriate adjustment to the assessment. The adjustment will recognize that Taxpayer filed the December 2012 return and remitted tax with that return.

#### **FINDING**

Taxpayer's protest is sustained.

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